IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No.15 of 2003

Gopi Chand
S/o Late Sri Chand Mal
R/o Mohall Chaklan Jwalapur
Haridwar District-Haridwar. …….Revisionist

Versus

1. Judge, S.C.C./District
   Haridwar
2. Motiram
   S/o Sandal Singh
   R/o Haweli Mangaram Chandmal
   Kalikund Ghat Bhimgauda Road
   Haridwar, District- Haridwar. ....Respondents.

Shri Alok Singh, learned counsel for the revisionist.

Hon'ble Prafulla C. Pant, J.

This Revision, preferred under Section 25 of Provincial Small Cause Courts Act, 1887, is directed against the judgment and decree dated 19.02.2003, passed in S.C.C. suit No. 01 of 1990 by learned Judge, Small Cause Court/District Judge, Haridwar whereby suit of the plaintiff/landlord is dismissed.

2. Heard learned counsel for the revisionist and perused the record.

3. Brief facts of the case are that the plaintiff/landlord (revisionist) instituted a suit for ejectment of the defendant/respondent No. 2 and for recovery of arrears of rent from him. It is pleased in the plaint that defendant/respondent No. 2 is the tenant of the plaintiff in

the accommodation in question, situated in Haweli Mangara Chandmal, Kalikund Ghat, Bhimgauda Road, Hardwar. The rate of rent is alleged to be Rs. 200/- per month. As per the plaint case, the defendant failed to pay the rent to the landlord from 01.06.1987 as such after serving a notice under Section 106 of Transfer of Property Act, 1882, the tenancy of the tenant was determined and suit for ejectment was instituted under Section 20(1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The defendant appears to have contested the suit and filed his written statement in which he denied having committed any default in payment of rent. It is admitted by respondent No. 2 that the plaintiff is the landlord. It is pleaded in the written statement that the rate of rent was Rs. 70/- per month and not Rs. 200/-, as alleged by the plaintiff. Learned Judge Small Cause Court, after recording the evidence and hearing the parties, dismissed the suit on the ground that the plaintiff failed to prove that the rate of rent was Rs. 200/- per month. It was further held by the trial court that the plaintiff failed to prove if the defendant has committed default in the payment of rent. Aggrieved by the same, this revision is filed by the plaintiff/landlord.

4. The notice issued from this Court was personally served on the defendant/respondent No. 2 – Motiram on 13.09.2005 but for the reasons best known to him, he did not turn up to contest the revision.

5. Learned counsel for the revisionist argued that the learned Judge Small Cause Court has erred in law in

holding that the plaintiff failed to prove his case on the point of rate of rent, and as to the default in payment of rent committed by the defendant. In this connection, it is further argued that learned trial court has committed error of law in holding that the entire burden to prove the same was on the plaintiff. I have gone through the impugned judgment and also the evidence on the record. P.W. 1 Gopi Chand, landlord/plaintiff has stated on oath that the rate of rent was Rs. 200/- per month and the defendant failed to make any payment of rent. Statement of P.W. 1 Gopi Chand is corroborated by the statement of P.W. 2 Chandra Mohan, who has stated that the rate of rent was Rs. 200/- per month. It is pertinent to mention here that as to the default in payment of rent, the plaintiff could have adduced only negative evidence that he has not received the rent from the tenant. And thereafter the burden shifts on the defendant to prove that he did make payment of the rent. D.W. 1- Moti Ram (tenant) has stated on oath that he has committed no default in payment of rent. He has further denied that the rate of rent was Rs. 200/- rather he alleges that the rate of rent was 70/- per month only. But the tenant failed to get his statement corroborated by any documentary evidence. He has not produced any receipt issued by the landlord that the rate of rent was Rs. 70/- per month. Statement of P.W. 1 Gopi Chand is relevant to be mentioned here that he used to issue receipts to all the tenants including the defendant. In these circumstances, in the opinion of this Court, learned Judge Small Cause Court has committed error of law in disbelieving the statement of plaintiff and in holding that

the burden lies on the plaintiff and that he failed to prove the rate of rent and the default.

6. Paper No. 24-C in the trial court record is a copy of the reply to the notice issued under Section 106 of the Transfer of Property Act, 1882, which indicates that the defendant has gone to the extent of disputing the landlordship of the plaintiff as it is mentioned in the said document that one Shri Brij Mohan Sharma has claimed himself to be the landlord and as such, after receiving notice from him the tenant has deposited the rent under Section 30 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, but it has not been made clear in the written statement that in whose name the said rent was deposited. In the circumstances, this Court is of the view that the defendant has failed to disprove the fact after the evidence adduced by the plaintiff that he (defendant) committed any default in payment of rent.

7. For the reasons as discussed above, the impugned judgment and decree is liable to be set aside. Accordingly, the judgment and decree passed by the Judge, Small Cause Court/District Judge, Hardwar in S.C.C. suit No. 01 of 1990 is set aside. The revision is allowed. The suit is decreed with costs for ejectment of the defendant and also for the arrears of rent and mesne profits claimed in the plaint.

(Prafulla C. Pant, J.)

Dt: 18th of April, 2006
Sweta